REMARKS

In response to the above-identified Office Action, Applicants amend claims 1, 4, 6, 22 and 24. Applicants do not add any claims and do not cancel any claims. Accordingly, claims 1-32 remain pending in the application.

I. Claims Rejected Under 35 U.S.C. § 112

Claims 6 and 24 stand rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter that the Applicants regard as the invention.

The Examiner has noted that the claims 6 and 24 include the limitations of "the new demand data" and stated that there is insufficient antecedent basis for these terms. The Applicants have amended each of the claims to remove the definite article and, thereby, correct the antecedent basis issue. Accordingly, reconsideration and withdrawal of the indefiniteness rejection of claims 6 and 24 are requested.

II. Claims Rejected Under 35 U.S.C. § 102

Claims 1-5, 7-8, 10-23, 25, 26 and 28-32 stand rejected under 35 U.S.C. § 102 as being anticipated by U.S. Patent No. 6,609,101 issued to Landvater (hereinafter "Landvater").

To establish anticipation, the Examiner must show that the cited reference teaches each element of the claim. In regard to independent claims 1, 4, 15 and 22, these claims include the elements of "a demand projection module to calculate a weighting factor" (claim 1), "calculating a weighting factor for a plurality of subdivisions of the time period" (claim 4), "means for calculating a weighting factor" (claim 15) and "calculating a weighting factor for a plurality of subdivisions of the time period" (claim 22). The Applicants have reviewed the sections of Landvater that the Examiner has cited as teaching the determination of a weighting factor, but have been unable to find any disclosure therein that supports or enables the calculation of a weighting factor. Rather, the weighting factors discussed in Landvater appear to be either predetermined or user-specified. There does not seem to be any indication that the weighting

factors are derived or calculated in any manner in the cited sections column 4, lines 53-58, column 11 lines 53-68, column 13, lines 5-29 and column 19, line 48 to column 20, line 20.

There is no discussion of the calculation of weighting factors in these sections of Landvater. Column 4, lines 53-58 of Landvater discusses adjustments to forecasting based on holidays where adjustments are made by suspending the "smoothing of product demand ... proximate a holiday" and "reallocating said greater projected sales to selected days proximate a holiday." No explanation is given here as to how the reallocation is accomplished. Column 11, lines 53-68 of Landvater include a similar discussion where "holiday sales from prior years are shifted, smoothing is eliminated during holiday periods, and daily sales percentages are overridden." No explicit discussion of weighting factors or details as to how daily sales are overridden is provided. Column 13, lines 5-29 of Landvater indicates that override percentages are retrieved from a database and loaded into daily override arrays. Thus, these override percentages are not calculated. They are merely retrieved. No explanation of their origin is provided. Column 19, line 48 to column 20, line 20 of Landvater does not appear to provide any significant clarification other than to teach that user-specified weights can be utilized. Again, weights are provided to the system and not calculated. Therefore, the Examiner has not established and the Applicants are unable to discern any other part of Landvater that teaches the calculation of a weighting factor by a demand projection module. Accordingly, reconsideration and withdrawal of the anticipation rejection of these claims are requested.

In regard to claims 2, 3, 5, 7-8, 10-14, 16-21, 23, 25, 26 and 28-32, these claims depend from independent claims 1, 4, 15 and 22, respectively, and incorporate the limitations thereof. Thus, for at least the reasons mentioned above in regard to the independent claims, Landvater does not teach or suggest each of the elements of these claims. Accordingly, reconsideration and withdrawal of the anticipation rejection of these claims are requested.

III. Claims Rejected Under 35 U.S.C. § 103

Claims 6 and 24 stand rejected under 35 U.S.C. § 103 as allegedly being unpatentable over Landvater.

To establish a *prima facie* case of obviousness, the Examiner must show that the cited references teach or suggest each element of the claims. In regard to claims 6 and 24, the Applicants have reviewed each of the cited sections relating to each of the elements of claims 6 and 24, but are unable to discern any teaching or suggestion therein that any of the disclosure in the cited sections relates to the calculation of a weighting factor. It appears to the Applicants that the Examiner has not taken into consideration that each of the elements of claims 6 and 24 form a part of a weighting factor calculation. However, each of these claims clearly states the limitation "wherein calculating the weighting factor comprises." Thus, the Applicants respectfully request that the Examiner clarify the manner in which the cited sections relate to the calculation of a weighting factor, if the Examiner maintains this rejection to claims 6 and 24.

Further, Applicants traverse the Examiner's taking of Official Notice in regard to these claims. The Examiner states that "official notice is taken that inverting (flipping, inversion, etc.) one or more factors (weights, variables, parameters, etc.) is a common statistical and mathematical technique." The Examiner has similarly taken Official Notice of "smoothing." However, an intermediate result as well as previous weighting factor are also used to establish a new weighting factor in the recited claim language. Thus, the Examiner has not read and interpreted the claim as a whole and has instead taken these terms out of their proper context. The Examiner has taken Official Notice of broad concepts when the claims recite specific context and inter-relationships. Therefore, the Examiner has not properly established that the specific elements of these claims are well-known.

In regard to the Examiner's statement that

> "it would have been obvious to one skilled in the art at the time of the invention that the system and method as taught by Landvater with its utilization of well known smoothing techniques/algorithms would have utilized any of a plurality of well known smoothing approaches including but not limited to an inverted smoothing factor in view of the teachings of official notice; the resultant system/method capturing important patterns in the data, while leaving out noise."

However, the Examiner has not established that the cited reference, Landvater, discloses any methodology for calculating a weighting factor. Rather, it appears that the weighting factors are

either loaded from a database or user-defined and, thus, one skilled in the art would not think to combine any known algorithms with Landvater to calculate a weighting factor.

Further, the Examiner has failed to establish these allegedly well-known facts as part of the record as required by MPEP § 2144.03 and *In re Zurko*, 59 USPQ2d 1693 (Fed. Cir. 2001). MPEP § 2144.03 clearly sets forth that the Examiner must provide "specific factual findings predicated on sound technical and scientific reasoning to support his or her conclusion of common knowledge." The Examiner has not provided such support. Further, as clarified in *In re Zurko*, "[w]ith respect to core factual findings in a determination of patentability, however, the Board cannot simply reach conclusions based on its own understanding or experience – or on its assessment of what would be basic knowledge or common sense. Rather, the Board must point to some concrete evidence in the record in support of these findings." See, *In re Zurko* at 1697. Thus, the assertion of Official Notice has not been properly established by the Examiner and cannot be relied upon as the basis for a *prima facie* case of obviousness.

In regard to claims 9 and 27, these claims depend from independent claims 4 and 22, respectively, and incorporate the limitations thereof. Thus, for at least the reasons mentioned above in regard to those claims, these claims are not obvious over Landvater.

The Applicants again traverse the taking of Official Notice in regard to the Examiner's statement that "[o]fficial notice is taken the separating (decomposing, de-trending, removing noise splitting, etc.) demand data into its various components, one of which is the base/baseline demand data, is old and very well-known." The Examiner has pointed to Makridakis in support of this Official Notice, specifically identifying section 3/1, pages 84-87 and Figure 3-1. However, the Applicants have reviewed the cited section of Makridakis but are unable to discern any teachings therein relating to separating demand data between promotion demand and baseline demand. Rather, the formulas defined in this section of Makridakis appear to presuppose the access to separated data. The formulas establish a relationship between the various variables within the functions, but do not appear to disclose a method of deriving any of the individual factors from aggregate data. Thus, if the Examiner maintains the rejection, the Applicants request that the Examiner set forth the requisite technical and scientific reasoning explaining the method in which the cited reference supports the taking of Official Notice.

Accordingly, the Applicants invite the Examiner to correct his Official Notice or withdraw the related rejections based on it. Accordingly, reconsideration and withdrawal of the rejection of claims 9 and 27 are requested.

CONCLUSION

In view of the foregoing, it is believed that all claims now pending patentably define the subject invention over the prior art of record, and are in condition for allowance and such action is earnestly solicited at the earliest possible date. If the Examiner believes a telephone conference would be useful in moving the case forward, he is encouraged to contact the undersigned at (310) 207-3800.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2666 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17, particularly extension of time fees.

Respectfully submitted,

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Dated: 6/25, 2008

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CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being submitted electronically via EFS Web on the date shown below to the United States Patent and Trademark Office.

Melissa Stead 6-25-08

Melissa Stead Date